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HEARINGS

Before The

COMMITTEE ON PUBLIC WORKS

UNITED STATES SENATE

WATER POLLUTION CONTROL ACT

EXECUTIVE SESSION

Washington, D. C.

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WATER POLLUTION CONTROL ACT

FRIDAY, OCTOBER 15, 1971

United States Senate,
Committee on Public Works,
Washington, D. C.

The Committee met at 10:00 a.m., pursuant to notice, in room 4110, New Senate Office Building, Hon. Jennings Randolph (Chairman of the full Committee) presiding.

Present: Senators Randolph, Eagleton, Bentsen, Cooper, Stafford and Baker.

Senator Jennings. The Committee will come to order.

Your Chairman would want the concurrence of the members, I believe it is appropriate, but I would want the record to show that the Committee arranged to hear from representatives from the State of New York, Mr. Paul Eastman, and Miss Donna Mitchell, and these people have come, and they have been talking with staff members about problems that concern participation of the states in the pending legislation, on water quality problems.

Is it agreeable with all of the members that we give them the opportunity to talk this morning, with the members

of the Committee?

Senator Cooper. We would be happy to hear them.

Senator Jennings. Thank you.

Mr. Eastman, I believe you would want to introduce the subject matter as you see it, from the standpoint of your State of New York.

You speak just for New York, is that correct?

Mr. Eastman. That is right, although we have been in touch with many of the other states from time to time, with regard to previous language that had been available to the states to review, and I cannot by any means speak for any of the states other than New York, but I do think that in principle many of my feelings would probably represent a significant number of the feelings of the states, and I appreciate very much the opportunity to be here.

It was not exactly anticipated, in fact, I did not expect to be here on Friday, I came to be here on Thursday, and I washed out my shirt, the cuffs are still wet, so if I sound like I am all wet, that may be literally true.

But we have had the opportunity to review Committee print number three, which came out just last Friday, which I do not think any other state has had a chance to review, and we are particularly concerned because this print certainly ties together the provisions of the proposed bill, and one is better able to understand the overall implications to a

state program better than ever before, and particularly we are concerned that other states have probably not had the same opportunity to look at the total context, and, therefore, get the full impact on their state program.

In essence, we are concerned with one very basic and fundamental and obvious intent of the Committee print, and that is its changing from a primary role of what control on the part of the states, to a primary, if not sole authority for water pollution control vested in the Administrator of the Environment Protection Agency.

The only role for the states would be that which specifically require in the print, or that which would be delegated to by the Administrator. This bothers us, one, because we think it would have a considerable impact on the present momentum, that has been achieved in many, if not all states, and in terms of inhibiting the maintenance of that momentum, and, of course, you could add to it.

Second, I have seen the State increase in the past few years significantly their budget for water pollution control, and with the control over the role of the states over water pollution control, completely vested in the Administrator, it raises a question in my mind whether a state should continue to budget for its water pollution control, which in effect, is under complete authority of the Administrator of the Environmental Protection Agency.

There are provisions for increase of Federal grants to

the states for carrying out state programs, but there are also provisions wherein the Administrator, with no specific spelled out procedure for appeal, could withdraw entirely the Federal program grant to the state on the basis of his dissatisfaction with some part or all of the state programs, so the state program insofar as it would be supported by the Federal grant, would be in jeopardy from month to month, from week to week, from the withdrawal by the Administrator, without any specific provision for appeal of the Administrator's decision, and, secondly, the print calls for extremely stringent requirements, as I read it, the basic philosophy is to restore the waters of the nation to their natural physical, chemical and biological integrity.

We choose to call that the 1491 standard, that is the year before Columbus arrived in America, and the Administrator of the EPA is given the authority to define what the restoration of the natural physiological and biological integrity of the waters would be.

There is no relationship with one exception, to the uses of the waters, and, therefore, the restoration would represent a tremendous investment, and without in many cases comparable benefit in terms of the uses of the waters, the philosophy now, and in all states, and in the present Federal Act is that the specifics and numerical standards are related to the classification of the uses, not only present uses, but

5 1 anticipated future uses, and in all states, reclassified in
2 accordance with their having learned of any additional present
3 uses, higher uses, or anticipatted future uses.

4 That is a constantly recurring activity in New
5 York, and in most other states.

6 Along with these varying extraordinarily stringent
7 requirements, there is no recognition of the costs.

8 The provisions for Federal grants, for construction
9 of public waste treatment facility, start with \$2 billion
10 in the present year, and go up a billion a year.

11 I think it is for four years. Now, and this, at
12 least in New York State, it is not sufficient to maintain
13 the momentum of the present program.

14 We have 112 programs, 112 projects that are
15 preliminarily planned and defined, that we anticipate to be
16 approved by the Environmental Protection Agency in this
17 present fiscal year, and under New York's allotment, about
18 8.08 percent of \$2 billion, which since it is on a population
19 basis, would be about \$145 million, and we figure this would
20 enable us to have five approximately, under present standards,
21 of the 112, and New York would be extremely hesitant to
22 continue to pre-finance the Federal share as in the past, and
23 according to EPA's figures, to the extent of \$880 million
24 for future projects, although we are hopeful this is a
25 situation that will lend us to believe that perhaps it is not

wise to continue, since one is always in jeopardy of never getting his money back, so we would tend to feel that the prudent man would not continue to pre-finance, and, therefore, all projects would be limited on the basis of availability of Federal money, which instead of 112 in this fiscal year in New York it would be as low as five.

In the background, the position of changing over completely to effluent limitations, and achieving by 1981 for industries, in 1985 for municipalities, a discharge of no pollutant standards, in any case, where these effluent limitations would not achieve a balanced population of fish, shellfish, wildlife, in and or on the waters, then more stringent requirements would be necessary to meet this receiving water standard, the only receiving water standard that remains in the Act.

That interpretation too is left with the Administrator, so there is always a question of a balanced population of aquatic life, whether it is now in 1971 or in 1491.

We do not go for a balanced population under polluted conditions, but we would question whether it is technically possible, or economically feasible to go for a balanced population, as the balanced population existed in 1491.

Yet the sole authority insofar as making that determination is invested in the Administrator, the State

7
1 would have no opportunity to make any determination, except
2 as completely subject to the Administrator and the EPA,
3 which again, relates to the vesting of the sole authority
4 in the Administrator, and with only the responsibility for
5 carrying out the activities as required by the Act, or by
6 the Administrator as far as the states are concerned.

7 The permit provision, under Title IV, I believe
8 it is, in part is presented to us, we think the national
9 system of permits can best be administered by states, with
10 an adequate permit program, it provides that a state permit
11 program would be submitted and approved by the Administra-
12 tor, but after he would approve the permit program of the
13 state, each permit issued by that state, would lie before the
14 Administrator for sixty days subject to his veto, so in
15 effect, it would give, or delegate to the state authority for
16 permit issuance, and on the other hand, take it away.

17 This I think is not only, if you will excuse the
18 extreme language, an administrative monstrosity, but completely
19 objectionable to a state, because it would have no authority
20 actually for the administration of a permit program, and each
21 and every permit would be subject to the veto of the Admin-
22 istrator of EPA.

23 Under the planning section, 209, it provides the
24 Administrator provide the areas in which waste management
25 planning would be carried out, and then provides for the

1 Governor to designate the agency to carry out this waste
2 management planning, and provides for a hundred percent
3 financing for this waste management planning, by the Federal
4 Government; however, if the Governor does not designate an
5 agency for the area described by the Administrator, or as I
6 interpret it, he does not designate an agency that is satis-
7 factory to the Administrator, then the Administrator would
8 go to the locally elected officials for the establishment
9 of such an agency, and this in effect would leave the gover-
10 nor completely bypassed with regard to waste management plan-
11 ning in the state for which he is responsible.

12 This I think would be extremely objectionable, not
13 only to New York State, but to any state, and it can be
14 thus said that the Administrator would not really be carrying
15 out the planning, but we all know the power of the purse, and,
16 in effect, this power would essentially give the responsi-
17 bility for planning and his direct relationship to locally
18 elected officials for the carrying out of this plan.

19 I have just hit briefly the highlights of the
20 objections and the reasons for our being extremely disturbed
21 with it.

22 Senator Bentsen. Mr. Eastman, does that complete
23 the statement?

24 Miss Mitchell. Many other states are calling us to
25 interpret this bill for them, and it is very difficult for

1 us to do in the time we have, they have not gotten the bill,
2 so when we say we do not speak for other states, they are
3 still calling us, and we are getting reactions from other
4 states.

5 I just wanted to bring that to your attention.

6 Senator Bentsen. As you know, we have increased
7 the amount of funds.

8 What are you suggesting would be necessary in the
9 way of funds, if you do not think this is sufficient, when
10 you talk about 112 projects and in cutting down to five
11 projects, what do you think should be appropriated?

12 Mr. Eastman. Based on present requirements, and
13 the Governor has proposed in public hearings \$5 billion
14 a year for the first two years, during which time planning
15 can be carried out, it would begin, and we could determine
16 then what the needs would be, but we have based on our
17 experience, and our knowledge of other states, we have come
18 to the conclusion that \$5 billion a year for the first two
19 years would be the minimum needed to maintain the momentum
20 of the present construction program, based on the present
21 requirements.

22 Senator Bentsen. We run into the problem of the
23 Administration stating in their testimony here, that it is
24 not feasible, that mechanically that much money could not
25 be spent, and we run into the very real problem of about a

1 \$25 billion deficit a year, as far as funding programs are
2 concerned.

3 Miss Mitchell. The Administration is correct when
4 they say it could not be spent, but it could be committed
5 for spending.

6 Senator Bentsen. All right. I think that is a fair
7 statement.

8 Senator Buckley. Mr. Eastman, what Federal share
9 are you contemplating?

10 Mr. Eastman. In this \$5 billion, it was on the basis
11 of 55 percent Federal share, so a greater amount would be
12 necessary if there is a larger Federal share.

13 Miss Mitchell. This is under present criteria.

14 Senator Cooper. Could I ask something on this matter
15 of costs.

16 You said that you could get underway, at least
17 112 projects in your State, which would be ready.

18 What proportion of the total projects are necessary
19 at this time of that 112, is this all of them that you have
20 in mind?

21 Mr. Eastman. That we could get underway this fiscal
22 year, we have additional projects scheduled for fiscal 73
23 and 74.

24 Senator Cooper. Do you have any idea what the total
25 would be during this period?

1 Miss Mitchell. \$5 billion 55 million for the five-
2 year period.

3 Senator Cooper. You mean New York could spend in
4 that time \$5 billion?

5 Miss Mitchell. That is our project program cost
6 for the five-year period, based on present criteria.

7 Mr. Eastman. The Federal share, whatever the
8 percentage would be, would have to be applied to that
9 figure.

10 Senator Cooper. I think that points up the diffi-
11 culty that we are having, you can spend that in New York,
12 but to multiply it by the other states, it would really
13 present a fiscal problem, which is pretty large.

14 What do you think about the comparison of the contract
15 authority, and regular appropriations?

16 I ask that because some believe contract authority
17 is very active, at some point in the future, three or
18 four years, five years from now, the Government would be
19 loaded down with obligations, that would have to be paid in
20 one year, two years, or three years.

21 Naturally the burden would be less in the first two
22 or three years, but at some point, these debts would all come
23 due, and it would make a terrible impact on the Federal
24 budget.

25 Mr. Eastman. I can understand the concern of any

12 1 legislative body, with regard to its authority and responsi-
2 bility for appropriations, but I will not comment on that,
3 because I am not a part of the legislative body, and a
4 part of the executive body.

5 The contract authority appeals to us, and I think
6 it has a rational basis, in that the payout over any pro-
7 ject, particularly the large projects, spread out over a
8 period of years, perhaps, five, six, in some cases even
9 seven, and the contract obligation, at the time of commit-
10 ment, so that the project starts construction, need not
11 carry with it in that fiscal year the total appropriation.

12 The appropriations can be made in subsequent years,
13 which would lessen then in many states, the impact of the
14 appropriations, since it would be spread out over several
15 years as required to pay that amount as the project proceeds.

16 I do not think we have a strong feeling with regard
17 to the direct grant versus the contract authority, other
18 than what we are most interested in an adequate authoriza-
19 tion, and then with actual appropriations toward that
20 authorization, and in the past, it has been difficult, and
21 has resulted in New York in attempting to build up the
22 momentum of construction, having been pre-financed together
23 with its municipalities, \$877 million, and due to inadequate
24 authorizations, and inadequate appropriations that we have
25 had.

1 Miss Mitchell. What Governor Rockefeller is
2 proposing, it is something very similar to our \$1 billion
3 bond authority in New York.

4 We passed this issue in 1966. Subsequent to that
5 time we have been making commitments to that bond authority.
6 The actual spending has been in the neighborhood of \$150
7 million. This is in five years, but having the bond
8 authority committed so we could go ahead with our projects,
9 and the \$5 billion a year on the general public sounds like
10 a lot of money, but yet when you view it in the context
11 of our \$1 billion bond authority, I do not think it is.

12 Senator Bentsen. I have been here long enough where
13 it does not sound like a lot of money to me.

14 Senator Jennings. Miss Mitchell, and Mr. Eastman,
15 Section 301 of the legislation we are considering has to do
16 with what I call a timetable, at least in part.

17 We think of the technology, the development of it,
18 and we think of the best practical program, and we set the
19 year 1976, and then we think in terms of moving forward to
20 1981, as the date on which there would be no discharge.

21 Now, I am not attempting to debate the subject, I
22 am only asking you, do you think those dates are realistic,
23 or do you think that there should be a modification?

24 Mr. Eastman. I think the 1976 standard of best
25 practical control technology is a realistic one. We may

1 have one or two very large projects that cannot be completed
2 by that time, but these are certainly unique and extra-
3 ordinary, not necessarily typical in the United States.

4 The 1981 year goal, and the 1985 goal for municipal
5 or public sources I think should not be included in the
6 Act, because Congress has in the past, and I think should
7 continue to review progress from time to time, and change
8 legislation in accord with the needs as they find it.

9 I do not think it is necessary to anticipate this,
10 so far in advance, and I think that is not a rationale, or
11 a logical goal, complete elimination of pollutants, and
12 unfortunately, anything that is written in, even if there
13 is an opportunity for correction some four or five years
14 hence, perhaps gets so fixed in stone, it is impossible to
15 correct when that time comes for correction, and I think
16 there is ample opportunity at anytime for Congress to
17 change the direction of the Federal program and the influence
18 of the Federal program on the states.

19 The last major change was in 1965, and then in 1966
20 the Clean Water Restoration Act, and which is roughly five
21 to six years ago, so it is obviously timely, this is a complete
22 and in depth review, and a change in legislation is needed
23 at this time.

24 1976, 1977 would be another time, but I feel it is
25 not necessary or desirable to write in 1981 and 1985, to write

15 1 in those goals at this time in 1971.

2 Senator Jennings. Are there any questions from
3 other members of the Committee?

4 Senator Stafford.

5 Senator Stafford. Thank you, Mr. Chairman.

6 Mr. Eastman, you said you apparently discussed this
7 with other states, or heard from other states, and since
8 I represent the state just east of you, the State of
9 Vermont, I wonder if you have discussed it with your
10 counterparts in Vermont?

11 Mr. Eastman. Interestingly enough, and as probably
12 you are aware, Vermont is not completely satisfied with
13 everything going on in New York State, but we still maintain
14 friendly communications.

15 Senator Stafford. I am glad to hear that.

16 Mr. Eastman. And just two weeks ago, after we had
17 gotten out to the other states some information, and we gave
18 them our opinions, I got a call from the head of the Vermont
19 program, and he thanked us vociferously for having supplied
20 this information, and said he was in the process of writing
21 to his Congressional delegation, in essence, supporting the
22 suggestion that at least on the basis of New York State, that
23 we had supplied him.

24 I am sure he put in his own particular views, but I
25 was surprised and extremely pleased particularly to receive

1 this communication from Vermont.

2 Senator Stafford. Thank you.

3 Well, in connection with the 112 projects which you
4 say are ready to go in New York, and the fact under the
5 present proposed program, only five could be funded, would
6 some kind of a pre-financing provision in this proposed
7 legislation help in New York?

8 Mr. Eastman. It would not, unless there is a guarantee
9 that there would be reimbursement of the pre-financing.

10 Experience is a good teacher, and I cannot speak
11 specifically for the Governor, but I think generally there is
12 a feeling it is becoming perhaps imprudent to continue
13 pre-financing without a guarantee agreement.

14 Senator Stafford. But provisions which guaranteed
15 recovery of any pre-financing would help New York?

16 Mr. Eastman. In essence, it would be a contract
17 obligation. It would be very helpful.

18 Senator Stafford. Thank you. That is all I have.

19 Senator Bentsen. Senator Buckley.

20 Senator Buckley. One area we have not touched on
21 is one I would appreciate advice on, it has to do with non-
22 point sources of pollution.

23 Do we now know enough of this non-point sources, or
24 what kind of projects, what kind of costs we might entail
25 in four or five years in controlling it?

17 1 Mr. Eastman. I am sure we do not. We have done, I
2 started to say, considerable -- I think that is an exaggera-
3 tion -- some work on evaluating the quantity, and the impact
4 of non-point sources, but not nearly sufficient to be able
5 to make cost estimates, or even define what specific control
6 procedures need to be applied, or could be applied in order
7 to remedy these effects.

8 I think it will take us a number of years to be
9 able to define this to the extent necessary to determine
10 what control procedures could be applied, and what their
11 costs might be.

12 Senator Buckley. Another question I would like
13 to ask, based on our experience, are we getting to a
14 point whereupon we could relate effluent standards to
15 stream conditions?

16 Mr. Eastman. Well, we are not getting to the
17 point. We are at that point, and have been at that point.
18 We spent probably altogether half a million dollars or more
19 in New York, where we are developing stream and water
20 simulation models, mathematical models, for the purpose
21 of relating the in-stream or in-place quality, with the
22 effluent to enable us to predict the amount of effluent
23 control within a complete stretch of a water body, or a
24 stream, that is required in order that the stream standard
25 would not be violated.

1 This has gotten down to a fairly precise science.

2 It is not perfect, nor is any kind of evaluation of predictive
3 mechanism ever perfect, and as new treatment plants go on
4 the line, we then go back and verify our prediction, and
5 in many cases, we are able to prove with one subsequent
6 application of these simulated models other predictions.

7 Senator Buckley. You feel based on the present
8 situation, maintenance of stream standards as the guide
9 would be an effective way of evaluating?

10 Mr. Eastman. We feel that. Interestingly enough,
11 the Federal Government did most if not all of the work in
12 the development of a simulation model in the Delaware
13 estuary, and the lower Delaware estuary program is based
14 on that simulation and evaluation, in which there is an
15 adjustment of effluents to meet the water standards.

16 Mr. Jorling. On that point, could I ask for infor-
17 mational purposes, since waters are not zonable units in the
18 sense that that language can be applied to land, how do you
19 calculate the influence of pollutants into estuaries that
20 are programmed into your receiving water effluent standards,
21 that enable you to allow water quality, in a certain reach,
22 that allows pollutants to be discharged into that water, that
23 ultimately work their way into the estuaries and the oceans?

24 How do you calculate the impact of that allowable
25 pollution into the estuaries, and into the ocean, in your

19 1 simulation models?

2 Mr. Eastman. Well, for example, our Hudson River
3 Sumulation Model, goes from the upper Hudson, all the way
4 down to the mouth of the New York Harbor, and so we are
5 able to follow the fate of a pollutant, if it is a degradable
6 pollutant, there is a change---

7 Mr. Jorling. You do calculate the rate in the coastal
8 region as a part of your simulation model, in the harbor
9 area, and adjacent to it, out in the coastal area waters?

10 Mr. Eastman. The model itself would not calculate
11 the rate.

12 We would be able to follow the concentration of
13 the pollutant, or any number of pollutants.

14 Mr. Jorling. So that is calculated in your simula-
15 tion?

16 Mr. Eastman. Yes. The rate of pollution can be
17 followed in the simulation models.

18 Mr. Jorling. How long do your projections of simula-
19 tion take you, do you allow a certain amount of nutrients
20 to be discharged and calculated over a period of time?

21 Mr. Eastman. No.

22 Senator Bentsen. Senator Cooper, do you have any
23 questions?

24 Senator Cooper. If I could, I understand you have
25 studied the draft before us, and I would like to know, what

do you consider New York State authority to be with regard to the issuance of permits?

Mr. Eastman. What authority does New York State now have?

Senator Cooper. This draft, what authority would you have with respect to the issuance of permits?

Mr. Eastman. The authority New York State would have, if our permit program were approved by the Administrator, we would have the authority to issue permits, but every permit would be subject to a veto by the Administrator.

Senator Cooper. What is it you recommend, what would you like it to be?

Mr. Eastman. If a permit program is submitted to the Administrator, and reviewed according to specific criteria, spelled out in the Act, plus any other criteria, that might be required by the Administrator, and then is approved by the Administrator, it seems to me it is unnecessary and undesirable administratively for every permit to go to the Administrator.

I would eliminate that where every permit would have to go before the Administrator and be subject to his veto power.

Senator Cooper. I doubt he would see them all. He would probably look at the big ones.

Mr. Eastman. No. We found the degree to which the Administrator and his agents look at anything they are

21
1 required to review, is directly correlated to the number of
2 people they have, and they are increasing their staff.

3 Congress has been fairly kind to the Environmental
4 Protection Agency, and we find a large number of new people,
5 and as a result, they are now looking at anything and
6 everything to the extreme, and I am sure this would be the
7 case in the instance of the permits.

8 Senator Cooper. I have one other question, if I
9 may.

10 You raised some questions here, that we have
11 argued at great length, and I will say for myself, I am not
12 quite clear about them yet, but this question of what is
13 to be achieved for this first period to 1976, and then the
14 next phase, phase two, from 1976 to 1981, where it is the
15 best available technology, what is it about that that
16 troubles you?

17 Mr. Eastman. I think it is premature for Congress
18 to establish these which would be in effect in my inter-
19 pretation a standard, regardless of what language is included
20 in there, they would become a standard.

21 That has been my experience with the Federal program,
22 and--

23 Senator Cooper. What is it specifically that you
24 believe is either impracticable, unattainable, or too
25 damaging, what is it?

1 Mr. Eastman. Well, I know for a fact, what the
2 uses of New York Harbor are, and this would attempt to
3 achieve a 1491 quality of New York Harbor which will not
4 be used under any circumstances for that purpose, and
5 our calculation of what it would cost just to control the
6 municipal runoff of pollutants, from New York Metropolitan
7 area, as well as the rest of the State, not the industrial
8 sources, is \$113 billion, and I calculated rapidly, this
9 would provide swimming pools for every residence in the
10 United States, every family of four in the United States.

11 Mr. Jorling. What form of control is that figure
12 premised on?

13 Mr. Eastman. It would be controlling all urban
14 runoff.

15 Mr. Jorling. What kind of technology would you use
16 for that treatment?

17 Mr. Eastman. Essentially a secondary level of
18 treatment for all urban runoff.

19 Mr. Jorling. And is that figure including separating
20 the storm sanitary sewers?

21 Mr. Eastman. No. That might intensify the problem.
22 Now, when they are combined, it might be easier to treat all
23 of the runoff than it would be if we were to separate it.

24 Senator Cooper. I will go one step further, what
25 you really go back to, and saying that this definition, and

23 1 I take it you would consider this the natural state, you
2 want something clear about that, what we mean by the state
3 of the water, the state of the quality of the water we
4 are trying to attain?

5 Mr. Eastman. It is clear to me what is wanted,
6 and I base this on discussions with some people who apparently
7 have had influence on this, that truly, this is a 1491
8 standard, although there is some question raised, whether
9 on the Hudson, 1491 would be early enough, because allegedly
10 the indians burned off some of the forest, so we would have
11 to go back earlier, beyond where the indians burned off
12 the land.

13 I am not being facetious, but I think that is
14 the intent of this language.

15 Senator Cooper. It is the natural state, I think.

16 Mr. Eastman. I have also looked up in the dictionary
17 the definition of integrity, in order to clarify this for
18 myself.

19 I am extremely concerned because of the implications
20 of this.

21 Senator Cooper. We tried to arrive at a definition.
22 Well, I think that is all I have. Thank you very much.

23 Miss Mitchell. There is one area, that is the relation-
24 ship in areawide planning, and regional planning, and the
25 user charges, and I think you can make this point very well.

24 1 Senator Jennings. Let me say this, Mr. Eastman,
2 as you know, we wrote in some provisions in there that
3 we would like to keep the New York Harbor and the Houston
4 Channel clean, and talked about some cost benefit ratios,
5 and I must say we do not have states that are as progressive
6 and as objective in their administration as New York and
7 Kentucky, and Texas, and when we find one that is delin-
8 quent in what it is doing, and really is not doing its job,
9 how do we handle that, what do we do on the Federal level, to
10 try to see that they discharge their responsibilities,
11 without taking the job away from them.

12 Mr. Eastman. Well, I think that we do not want
13 to toss the baby out with the bath water, or have a remedy
14 that is worse than the ailment.

15 I think that a provision wherein it is already in
16 the existing act, where the state program, the description,
17 and the progress and the statutes as submitted to the
18 Administrator, reviewed by him, either approved, and he
19 has the authority to disapprove it.

20 Now, there is an appeals procedure, wherein that
21 perhaps it may be a little cumbersome, but he can disapprove
22 it.

23 To the best of my knowledge, no Administrator has
24 ever disapproved a state program, and the statutes and
25 accomplishments on the basis of it being inadequate, but there

1 is that authority now in existence.

2 There is now an appeal procedure, and I think there
3 should always be an appeal procedure.

4 Perhaps this best appeal procedure is a little
5 cumbersome, and perhaps the Administrator is reluctant to
6 resort to disapproval, but this could be applied on a state-
7 by-state basis, it could be applied to New York State, as
8 to any other state, we would be subject to as any other
9 state, but this would permit him to apply his authority
10 in those areas, anywhere in which there are definite
11 inadequacies.

12 Senator Bentsen. Are there other questions of the
13 members of the Committee?

14 Mr. Jorling. The technology being developed today,
15 will be the technology that will be applied tomorrow, and
16 if you allow the technology to be developed now, upon the
17 premise of discharge, which would be the advantage, if you
18 limit this program to 1976?

19 How do you provide clear statutory guidance and
20 policy guidance so that technology research that will be
21 undertaken today will be based on a premise of no discharge,
22 and in fact enable you to reach that goal at some time in
23 the future?

24 Mr. Eastman. One, I do not think that should be a
25 goal, and, two, the technology is now available to achieve

1 complete elimination of pollutants?

2 The sailing water program has developed a technology,
3 and it has been adapted for advanced waste treatment purposes,
4 and is adaptable.

5 It can be applied today, and in some cases is being
6 applied today.

7 I know of actual installations which convert sewage
8 into drinking water quality.

9 It is in operation now, today, so that this tech-
10 nology is available, and is being applied today, where it is
11 not applied everywhere, because it is not economically
12 feasible.

13 In fact, it is economically ridiculous to even
14 consider it.

15 Mr. Jorling. With that the goal, it would continue
16 to be developed, the task comes down to if you are taking
17 technology, talking about sailing water conversion, and
18 apply it to waste treatment, the cost will be high, but if
19 you take a technology developed for waste treatment, the
20 cost picture may change dramatically, and likely using other
21 technology or technological examples, that would be the
22 case, would it not?

23 Mr. Eastman. Treatment is always accomplished in
24 stages.

25 The advance waste treatment technology is essentially,

27 1 and has always been applied, and the thing is likely to be
2 perfected in terms of reducing costs from the sailing water
3 conversion program.

4 I know the sailing water conversion program, which
5 I followed very closely, because of the application of it to
6 the waste treatment field, and it has gotten down to a
7 pretty close irreducible minimum, based on the power
8 requirements, and, therefore, related to the cost of power,
9 and I have talked to a number of scientists, which point
10 out to me, that this is down to an irreducible minimum.

11 Now, the projects for conversion of ocean water,
12 drinking water, ocean water to drinking water, the intent
13 is to justify them on the basis of combined power, and
14 sailing water conversion plants using the power for free,
15 for the purposes of producing the conversion of sailing
16 water.

17 Mr. Jorling. We have an estimate in the order of
18 \$50 billion for the entire sewerred population of the United
19 States, plus the projected population growth of the United
20 States, could be provided with treatment systems of the
21 Muskeegan type, and I am curious to know, whether or not
22 you have made any preliminary estimates of what it would
23 take to apply a Muskeegan type technology to New York
24 City.

25 Mr. Eastman. Yes, we had made an estimate it would

1 require 350,000 acres to dispose of the wastes of New York
2 City.

3 We have also looked where it might be disposed of.
4 The nearest and best spot would be the two northern counties
5 in New Jersey.

6 Mr. Jorling. Have you looked at the Catskills?

7 Mr. Eastman. Well, --

8 Mr. Jorling. Or the Upper Delaware Basin?

9 Mr. Eastman. The land costs, we realized the Catskills
10 are probably the biggest recreational area in the northeastern
11 United States, and it might be almost equally objectionable
12 to using it, plus the fact, we would have to transport it
13 farther than we would, if we would transport it to the two
14 northern counties in New Jersey.

15 Mr. Jorling. How about transporting it down to the
16 Pine Barren areas in New Jersey?

17 Mr. Eastman. You would still increase the transport
18 costs.

19 Mr. Jorling. But pipeline costs do not increase either
20 that greatly with the distance of the pipe.

21 Mr. Eastman. You have the cost of power.

22 Now, we are unable in the time we have had to make
23 a detailed cost analysis, and that is why I would say any
24 estimate of \$50 billion is one offhand I think would fully
25 fall short of what the total or actual costs would be.

1 Mr. Jorling. Could not that criticism be applied
2 to your hundred billion dollar figure?

3 Mr. Eastman. Absolutely. I started to say, the
4 figure, if anything, that is much too low, and our \$113
5 billion figure if anything is also too low.

6 Senator Bentsen. Mr. Eastman, let me ask you if
7 there is anything in Section 106 and 402, where you get
8 into the program grant section, and then the permit section,
9 that would be contrary to what you think would be a good
10 state program, other than a degree of Federal control intrud-
11 ing on the states?

12 Mr. Eastman. In 402?

13 Senator Bentsen. That would be in 402 and 106, where
14 you get into the program grant section, and you get into
15 the permit section, is there anything that would be incom-
16 patible other than the degree of Federal control?

17 Mr. Eastman. I will address myself first to the 402
18 permit program, and as I mentioned before, we object
19 strenuously to veto power over every permit.

20 Senator Bentsen. I will qualify my question to
21 that caveat.

22 Mr. Eastman. And specifically in the permit
23 provisions, it would require a public hearing, before the
24 issuance of each permit by the state.

25 We now have discretionary authority to have a public

1 hearing in connection with each permit, but it would be very
2 impractical as a task to have a public hearing on each and
3 every permit.

4 Senator Bentsen. You think some are of such little
5 consequence that a public hearing would not be called for?

6 Mr. Eastman. I would say that most are in that
7 category.

8 We find, actually, that in some cases, we have
9 public hearings to obtain additional information. We find
10 the information is sufficient, but we still have a public
11 hearing because there is substantial controversy.

12 We had an example in the case of Bethlehem Steel
13 on the deep-well.

14 I am assured by geologists and all kinds of scientists
15 that we had available to us in connection with setting the
16 requirements for this deep-well discharge, that there is
17 nothing more stringent, and nothing possibly more stringent
18 to be required, but we still had a public hearing, because
19 there is a controversy about it.

20 This is an example of the kind of procedure we
21 follow, and so we think it would be unnecessary and undesirable
22 to have a public hearing for each permit, but certainly
23 discretionary authority to have a public hearing is
24 desirable.

25 Senator Bentsen. I think there is some logic to that.

31 1 Senator Buckley. I have a couple of questions
2 that I would like to ask you, Mr. Eastman.

3 This print also has another standard, having to do
4 with balanced population of fish and wildlife.

5 Would you feel that is a fair goal?

6 Mr. Eastman. I do not think so, because I think as
7 it would be interpreted, this is in essence the 1491
8 standard, and I am not sure a balanced population does not
9 refer to a balanced population under pollution conditions,
10 or if it is to mean a balanced population under natural
11 conditions, and it is true, you can achieve a balanced
12 population under other conditions, but there will be a
13 different form of organism, but it will be balanced.

14 If it is a balanced population, based on the use
15 designations of the water, both present and anticipated
16 future, I think perhaps this would be reasonable.

17 Senator Buckley. The other area, I appreciate your
18 remarks on this, it has to do with the one you started to
19 discuss, about user charges, and what this does to the
20 state of ecology as a practical matter.

21 Mr. Eastman. The provision of user charges that
22 bothers us most, is that this would require that the
23 industry share of the industry portion of the Federal share
24 of the cost of a project would have to be returned by
25 industry to the United States Treasury.

1 Now, the industry portion of the local share is
2 required to be provided by the industry to the locality. In
3 New York State, if we guarantee a combined sixty percent
4 state and Federal grant, the local share is forty percent.
5 That is actually pre-financed on the part of the municipality,
6 but we have found, and we have considered-- Well, we have
7 considerable experience with this, and we have found that
8 industry is reluctant to enter into twenty and thirty year
9 contracts, the life of the project, that is, for returning
10 their share of the local share, which is their share of
11 forty percent, because they are obligated, whether the
12 industry stays in that location, or whether it moves, and
13 anytime in the future to continue to repay over that period
14 of time, and in effect, they lose control over the manage-
15 ment of that amount of their revenue.

16 On the other hand, if they retain the responsibility
17 for their waste treatment facilities, they tend to provide
18 facilities that are more operationally intensive, rather
19 than capital intensity, and by having a more operationally
20 intensive facility, then if they discontinue operations, or
21 change this process, or product mix significantly, then
22 they do not lose the investment in capital costs nearly to
23 the extent that they would if they have gone into a more
24 capital intensive project represented by a municipality, so
25 the effect, particularly, with either a fifty-five percent,

1 or seventy percent Federal share, together with the local
2 share, industry would have to pay back that portion of
3 that total of shares, and I am convinced we would get
4 few, if any industries, except those small ones, that
5 have no alternatives, say a laundry in the center of the
6 City, we would have fewer if any industries that would go
7 into regional projects.

8 On the one hand, the Act in New York State, we push
9 very much for regional waste treatment management, because
10 we want to reduce the number of discharges, and we can do
11 so by a regional system, but I think this would tend to reach
12 that objective, which is the objective of the Committee
13 print.

14 Senator Bentsen. Are there any further questions?

15 Mr. Billings. Following up on the question of
16 Senator Bentsen on the elements of 106 and 402, which
17 would be the elements of a good state program, one of the
18 problems is trying to develop mechanisms to assure the sanctity
19 of a good state program, to give the Administrator adequate
20 authority to act against the states that have bad programs,
21 and at the same time, the section obviously limits to some-
22 what excessive discretion the Administrator has.

23 Do you have any suggestions on how we might write a
24 provision which in terms of 106, especially that which
25 protects the good states without interfering with the ability

1 of the Administrator to act for the bad states?

2 Mr. Eastman. Well, in essence, I cannot give you
3 any suggested language now.

4 I think as far as the principle of the matter is
5 concerned, the requirement of a state program, plus the
6 description of its accomplishment and status, be submitted
7 to the Administrator for review, gives the Administrator
8 adequate authority, and along with an appeal procedure, in
9 the case that the Administrator feel he would disapprove
10 this state program, I think would be in principle a desirable
11 approach.

12 I am concerned about specific requirements such as
13 there are now in there, particularly as related to citizens
14 suits, wherein any citizen can sue the Administrator for his
15 failure to carry out any of his non-discretionary responsi-
16 bilities, and so all of these requirements as spelled out
17 in the Act, would be subject to citizen suit, and I am sure
18 there would be many of them.

19 Mr. Billings. In Section 402, again, there has been
20 considerable effort made, and we are still in the process
21 of developing a method to assure ourselves that the permit
22 authority will be delegated to the states that have the
23 capacity, while at the same time, not putting the Adminis-
24 trator in a position of having to delegate to states which
25 do not have adequate capacity, or issue permits and require

35 1 conditions.

2 Again, I ask you the question, if we do not provide
3 a review of each permit, then in some people's opinion, the
4 Administrator would be more reluctant to delegate, than if
5 we do provide the review of the individual permit.

6 How do you rationalize these, how do you encourage
7 the Administrator to delegate to New York, without withholding
8 the right to review, and how do you maintain his capability
9 to act in the case of that program?

10 Mr. Eastman. I would provide the provisions for the
11 state program, and delegation, if approved by the Adminis-
12 trator, an appeals procedure, where if he disapproves the
13 state permit program submittal, there would be available
14 to the state an appeal of this decision.

15 I would even prefer that the appeal, it would not be
16 an appeals mechanism, it would be the Administrator would
17 have to justify before some tribunal of some type, adminis-
18 trative or otherwise, his failure to delegate, based on the
19 state's submittal, to put the burden of proof on the
20 Administrator, but if unable to do that, I at least think that
21 it would be wise to have an appeals procedure, wherein a
22 state could appeal a decision of the Administrator.

23 Senator Bentsen. Are there any other questions?

24 Mr. Maynard. The point on user charges, it might
25 be worth a little further explanation.

1 As I understand it, you do charge user charges for
2 purposes of recovering capital investments, maybe the
3 operations as well, in joint municipalities.

4 Mr. Eastman. The state recovers its grant by general
5 ad valorem taxes over the repayment life of the bond
6 issue.

7 Mr. Maynard. And you presumably recover the main-
8 tenance through user charges?

9 Mr. Eastman. Municipalities in New York, included
10 in the definition of municipalities is everything up to a
11 county, if it is a sewer district, most of the costs of the
12 industry portion of the local share is recovered by user
13 charges, based on the strength and volume of the waste.

14 Some municipalities also use as a method of recovery
15 benefit assessments, in some cases a portion of the ad
16 valorem tax, but by and large, most if not all are now
17 recovered by user charges based on strength and volume.

18 Mr. Maynard. Was your point then that the
19 Federal, that the localities, and the regional waste
20 treatment management agencies, when they are established,
21 should retain the portion of the Federal grant share that
22 is recovered through user charges, or that industries should
23 not have to repay the Federal grant share?

24 Mr. Eastman. My point is, it is not a matter of
25 principle, or either moral or ethical, it is a practical

37 1 matter, I doubt very much that industry, if they had to return
2 to anyone their portion of the Federal, plus local share,
3 would go into regional systems, because this would increase
4 the amount that they would have to return, over and above what
5 they have to return now, which is their portion of forty
6 percent, to their portion of something like seventy or
7 eighty percent, and we are finding, on the basis of present
8 contracts within industries, where their portion is a local
9 share, they are reluctant to enter into these contracts,
10 because they are twenty and thirty year contracts, which
11 they are reluctant to pay back, not only because of their
12 share of capital costs, but operation of maintenance costs,
13 and this is my prediction, that with this doubling of
14 the portion they would have to pay back, they would rather
15 build their own facilities, and maintain complete control,
16 in the event that they would either decide to move to
17 some other location, or they would change their process,
18 or their mix of product, so that they would change their
19 wastes.

20 Mr. Maynard. You do not think it is possible that
21 what we are talking about is institutional problems, the
22 fact that municipalities, that is, municipal facilities that
23 have capital facilities, that this may relate to the way the
24 contract is set up between the municipalities and the
25 industries?

1 Mr. Eastman. I think the contract has to be set
2 up this way, because the municipalities have to be assured
3 for the return of amortization, plus the operation and
4 maintenance held over the life of the project.

5 I do not think we could change that. Industry
6 rarely plans, because industry changes year by year, they
7 rarely plan for more than five years ahead, and I am not
8 critical of this, we just have to take cognizance of
9 it, and, again, it is not a matter of principle, that
10 industry should include in the cost of the product, every
11 cost of production, so I am not commenting on that
12 principle, I am just commenting on the practical problem
13 of getting industry in.

14 Senator Bentsen. Are there any further questions?

15 If not, Mr. Eastman, I think you have made a very
16 definite contribution.

17 Miss Mitchell, thank you for appearing before us.

18 Mr. Eastman. I thank you for the opportunity.

19 Miss Mitchell. Thank you.

20 Senator Bentsen. The Subcommittee will stand
21 in recess.

22 (Whereupon, the Committee was recessed at 11:30
23 o'clock p.m.)
24
25
